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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,593	05/18/2005	Wim Engelen	11951.0010.PC/US00	4274
45607 7590 12/27/2007 HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DRIVE SUITE 200 FALLS CHURCH, VA 22042				
EXAMINER CERNOCH, STEVEN MICHAEL				
ART UNIT		PAPER NUMBER		
4114				
MAIL DATE		DELIVERY MODE		
12/27/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/530,593

**Applicant(s)**

ENGELEN ET AL.

**Examiner**

STEVEN M. CERNOCH

**Art Unit**

4114

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/20/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-8 and 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In response to the Amendment filed on November 20, 2007, claims 2 and 9 have been cancelled and claims 1, 3-9 and 10-18 are pending.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3, 5-8, 10-13, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) and furthermore in view of Adamson et al. (US Pat No 5,413,251).

Regarding claim 1, Capy et al. teaches a dispenser comprising a container for holding a product dispensed (Fig. 1, 5) and a dispensing mechanism (1) wherein the container further comprising a container body (5), further comprising at least one outlet opening arranged in or near the side opposite to said bottom (8), a trigger sprayer (1) and further comprising a conduit (2), a neck (11), but does not teach an external chamber, however Dargols et al. does teach an external chamber (Fig. 1, 7), a conduct (10), but does not teach an air bubble, however Adamson et al. does teach an air bubble (column 3, lines 32-52), and also does not teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser, however Ginther et al. does teach that the container body is shaped to facilitate resting the container body on the forearm of a user of the dispenser (abstract, lines 6-9). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the conduct and external chamber of Dargols et al., the air bubble of Adamson et al. and the container contour of Ginther et al. in order to properly seat the container while keeping the air pressure balanced.

With regard to claim 3, Capy et al. does not teach a cylindrical body, however Dargols et al. does teach said cylindrical body (fig. 1, 1). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the cylindrical body of Dargols et al. to keep the fluid uniformly shaped.

In regards to claim 5, Capy et al. discloses wherein a protrusion is arranged close to the trigger sprayer to receive the end of a dip tube attached to said trigger sprayer (Fig.1, 14).

Regarding claim 6, Capy et al. teaches wherein the protrusion extends the conduct arranged in such a manner as to receive a dip tube attached to the sprayer (Fig.1, 14).

With regard to claim 7, Capy et al. discloses wherein the protrusion extends the neck arranged in such a manner as to receive a dip tube attached to the sprayer (Fig 1, 14).

In regards to claim 8, Capy et al. teaches that the protrusion is arranged in the neck (Fig.1, 14).

Regarding claim 10, Ginther et al. teaches that the sidewall of said container body is shaped in such a manner that said sidewall is resting on the forearm of a user (Fig. 1, 16).

With regard to claim 11, Capy et al. discloses wherein the protrusion contains an opening means and a closure means (Fig.1, 22).

In regards to claim 12, Dargols et al. teaches wherein the external chamber (Fig.1, 7) forms the external chamber of a coaxial tube (3) and the internal chamber (10) of said coaxial tube bears a trigger sprayer (2).

Regarding claim 13, Dargols et al. discloses that a dip tube (Fig. 1, 3) of the trigger sprayer (2) is lodged in the internal chamber (10) of the coaxial tube (3), extending into the external chamber of the coaxial tube (7).

With regard to claim 15, Ginther et al. teaches the external chamber (Fig.1, 18) of the coaxial tube (20) is shaped in the form of a hand grip and the container body is shaped such as to ergonomically rest on the user's forearm (abstract, lines 6-9).

In regards to claim 18, Capy et al. teaches an opening for filling in its bottom and/or in one or more of its sidewalls and/or in its side opposite to said bottom (Fig.1, 14).

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Richter et al. (US Pat No 5,433,347).

Regarding claim 4, Capy et al. through Adamson et al. does not teach wherein the container body has a cubical form comprising at least four side walls interconnecting the bottom with the side opposite thereto, however Richter et al. does teach wherein the container body has a cubical form (column 6, lines 61-63). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the cubical container of Richter et al. in order to ease in storage of the apparatus when done.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Libit et al. (US Pat No 6,213,358 B1).

With regard to claim 14, Capy et al. through Adamson et al. does not teach that the internal chamber of the coaxial tube is inclined by 10 to 45 degrees versus a sprayer axis perpendicular to the longitudinal spray axis, however Libit et al. does teach that the internal chamber of the coaxial tube is inclined by 10 to 45 degrees versus a sprayer axis perpendicular to the longitudinal spray axis (column 4, lines 23-26). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the internal chamber of the coaxial tube is inclined by 10 to 45 degrees so as to direct the sprayed liquid at other than a 90 degree angle.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Maas et al. (US Pat No 5,730,335).

In regards to claim 16, Capy et al. through Adamson et al. does not disclose wherein the trigger sprayer comprises a precompression system, however Maas et al. does disclose wherein the trigger sprayer comprises a precompression system (column 1, lines 24-28). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Capy et al. with the precompression system of Maas et al. for the use of pressurized liquids.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capy et al. (Fr Pub No 2,711,305) in view of Dargols et al. (US Pat No 3,814,292) further in view of Ginther et

al. (US Pat No 5,361,946) furthermore in view of Adamson et al. (US Pat No 5,413,251) and finally in view of Maas et al. (WO 00/76876).

Regarding claim 17, Cappy et al. through Adamson et al. does not teach wherein said dispensing mechanism carries at least one label displaying content and users information, however Maas et al. does teach wherein said dispensing mechanism carries at least one label displaying content and users information (Abstract, lines 15-22). Therefore it would be obvious to one of ordinary skill in the art to have the motivation to modify the dispenser of Cappy et al. with the labeling of Maas et al. to warn the consumer of any uses or miss-uses they may need to know about.

#### ***Response to Amendment***

9. Applicant's Amendment filed on November 20, 2007, regarding issues raised under § 112 have been deemed persuasive, therefore § 112 rejections have been removed. Moreover, Applicant's arguments with respect to claims 1-3, 5-8 and 12-13 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Seelhofer et al. (EP 1,035,034) discloses a plastic container and corresponding metering element with a closure. Wright et al. (US Pat No 5,160,071) teach vertical spray bottle nozzle. Arpin et al. (US Pat No 2,423,220) teaches a water pistol.



11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN M. CERNOCH whose telephone number is (571)270-3540. The examiner can normally be reached on M-T, 730-5, F1 -Off, F2 730-5 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Cheng can be reached on (571) 272-4433. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC  
1219/2007

/Joe H Cheng/  
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Art Unit 4114